

ORIGINAL

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CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
PDL DEPUTY

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15 IN THE UNITED STATES DISTRICT COURT FOR THE  
16 SOUTHERN DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA,

18 Petitioner,

19 v.  
20 AARON B. JOHNSON AND TANYA JOHNSON,

21 Respondents.

22 CV 263516 AJB  
23 Civil No.

24 PETITION TO ENFORCE IRS  
25 SUMMONSES

26 The United States of America, through undersigned counsel, hereby petitions this Court  
27 for an order enforcing the Internal Revenue Service ("IRS") administrative summonses served on  
28 respondents Aaron B. Johnson and Tanya Johnson and complains and alleges as follows:

29 1. This proceeding is brought at the request of the Chief Counsel, Internal Revenue  
30 Service, a delegate of the Secretary of the Treasury, and at the direction of the Attorney General  
31 of the United States.

32 2. Jurisdiction over the matter is conferred upon this Court pursuant to I.R.C. (26  
33 U.S.C.) §§ 7402(b) and 7604(a) and 28 U.S.C. §§ 1340 and 1345.

34 3. Venue over this matter is proper in the Southern District of California as the  
35 respondents reside in or may be found within the boundaries of the district.

1       4.     Erin Kelly<sup>1/</sup> is a Revenue Officer employed in the Small Business/Self-  
2 Employed Division of the IRS, and is authorized to issue IRS administrative summonses  
3 pursuant to I.R.C. § 7602, 26 C.F.R. § 301.7602-1, and IRS Delegation Order No. 4 (as revised).  
4 (Declaration of Revenue Officer Erin Kelly (hereinafter “Kelly Decl.”), (Kelly Decl., ¶ 2).

5       5.     Revenue Officer Kelly is conducting an investigation to determine Aaron B.  
6 Johnson’s ability to pay the income tax liabilities assessed against him for the tax years ending  
7 December 31, 2003, and December 31, 2004, and the trust fund recovery penalties, pursuant to  
8 26 U.S.C. § 6672, assessed against him for the taxable periods ending December 31, 1997,  
9 March 31, 2000, June 30, 2000, December 31, 2000, March 31, 2001, June 30, 2001, September  
10 30, 2001, March 31, 2002, June 30, 2002, December 31, 2002, March 31, 2003, June 30, 2003,  
11 September 30, 2003, and December 31, 2003. She is also conducting an investigation to  
12 determine whether Aaron B. Johnson and Tanya Johnson are liable for trust fund recovery  
13 penalties with respect to SD City Event, Inc., pursuant to 26 U.S.C. § 6672, for the taxable  
14 periods ending March 31, 2003, June 30, 2003, September 30, 2003, December 31, 2003, March  
15 31, 2004, June 30, 2004, September 30, 2004, December 31, 2004, March 31, 2005, June 30,  
16 2005, September 30, 2005, and December 31, 2005. (Kelly Decl., ¶ 4).

17       6.     Pursuant to this investigation, on May 1, 2006, Revenue Officer Kelly issued two  
18 IRS administrative summonses to Aaron B. Johnson. One summons was issued to determine  
19 Aaron B. Johnson’s ability to pay the income tax liabilities assessed against him for the tax years  
20 ending December 31, 2003, and December 31, 2004, and the trust fund recovery penalties,  
21 pursuant to 26 U.S.C. § 6672, assessed against him for the taxable periods ending December 31,  
22 1997, March 31, 2000, June 30, 2000, December 31, 2000, March 31, 2001, June 30, 2001,  
23 September 30, 2001, March 31, 2002, June 30, 2002, December 31, 2002, March 31, 2003, June  
24 30, 2003, September 30, 2003, and December 31, 2003 (“AJ Collection Summons”). (Kelly  
25 Decl., ¶ 4), Exhibit A. Revenue Officer Kelly issued the other summons to determine whether

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26       1/ “Erin Kelly” is a pseudonym used by the Revenue Officer in her official capacity as an employee of the  
27 IRS. (Declaration of Revenue Officer Erin Kelly (hereinafter “Kelly Decl.”), ¶ 1.

1 Aaron B. Johnson is liable for trust fund recovery penalties with respect to SD City Event, Inc.,  
2 pursuant to 26 U.S.C. § 6672, for the taxable periods ending March 31, 2003, June 30, 2003,  
3 September 30, 2003, December 31, 2003, March 31, 2004, June 30, 2004, September 30, 2004,  
4 December 31, 2004, March 31, 2005, June 30, 2005, September 30, 2005, and December 31,  
5 2005 ("AJ TFRP Summons"). (Kelly Decl., ¶ 4), Exhibit B.

6       7. The AJ TFRP Summons directed Aaron B. Johnson to appear before Revenue  
7 Officer Kelly at 880 Front St., Suite 3295, San Diego, California 92101-8869 on May 16, 2006,  
8 at 2:00 p.m. and the AJ Collection Summons directed Aaron B. Johnson to appear before  
9 Revenue Officer Kelly at 880 Front St., Suite 3295, San Diego, California 92101-8869 on May  
10 24, 2006, at 9:00 a.m. Both summonses required Aaron B. Johnson to appear before Revenue  
11 Officer Kelly in order to give testimony and to produce for examination the books, records,  
12 papers, and other data described in the summonses and their attachments. (Kelly Decl., ¶ 5).

13       8. On May 3, 2006, in accordance with 26 U.S.C. § 7603, Revenue Officer, S.  
14 Silverman served both the AJ Collection Summons and the AJ TFRP Summons by leaving a  
15 copy of each summons, which contained the attestation required by § 7603, at the last usual place  
16 of abode of Aaron B. Johnson. (Kelly Decl., ¶ 6), Exhibits C-D.

17       9. Pursuant to this investigation, on May 1, 2006, Revenue Officer Kelly issued two  
18 IRS administrative summonses to Tanya Johnson. One summons was issued to determine Aaron  
19 B. Johnson's ability to pay the income tax liabilities assessed against him for the tax years ending  
20 December 31, 2003, and December 31, 2004 ("TJ Collection Summons"). (Kelly Decl., ¶ 7)  
21 Exhibit E. Tanya Johnson is the spouse of Aaron B. Johnson and in accordance with community  
22 property laws in the State of California, specific financial information was required from Tanya  
23 Johnson to determine Aaron B. Johnson's ability to pay. Revenue Officer Kelly issued the other  
24 summons to determine whether Tanya Johnson is liable for trust fund recovery penalties with  
25 respect to SD City Event, Inc., pursuant to 26 U.S.C. § 6672, for the taxable periods ending  
26 March 31, 2003, June 30, 2003, September 30, 2003, December 31, 2003, March 31, 2004, June  
27 30, 2004, September 30, 2004, December 31, 2004, March 31, 2005, June 30, 2005, September

1 30, 2005, and December 31, 2005 ("TJ TFRP Summons"). (Kelly Decl., ¶ 7), Exhibit F.

2       10. The TJ TFRP Summons directed Tanya Johnson to appear before Revenue Officer  
3 Kelly at 880 Front St., Suite 3295, San Diego, California 92101-8869 on May 17, 2006, at 9:00  
4 a.m. and the TJ Collection Summons directed Tanya Johnson to appear before Revenue Officer  
5 Kelly at 880 Front St., Suite 3295, San Diego, California 92101-8869 on May 24, 2006, at 1:00  
6 p.m. Both summonses required Tanya Johnson to appear before Revenue Officer Kelly in order  
7 to give testimony and to produce for examination the books, records, papers, and other data  
8 described in the summonses and their attachments. (Kelly Decl., ¶ 8).

9       11. On May 2, 2006, in accordance with 26 U.S.C. § 7603, Revenue Officer Kelly  
10 served both summonses on Tanya Johnson by handing a copy of each summons, which contained  
11 the attestation required by § 7603, to Tanya Johnson. (Kelly Decl., ¶ 9), Exhibits G-H.

12       12. On May 16, 2006, the date scheduled for compliance with the AJ TFRP  
13 Summons, Aaron B. Johnson did not appear. (Kelly Decl., ¶ 10).

14       13. On May 17, 2006, the date scheduled for compliance with the TJ TFRP  
15 Summons, Tanya Johnson did not appear. (Kelly Decl., ¶ 11).

16       14. On May 24, 2006, the date scheduled for compliance with the AJ Collection  
17 Summons and the TJ Collection Summons, neither Aaron B. Johnson nor Tanya Johnson  
18 appeared. (Kelly Decl., ¶ 12).

19       15. On or about May 25, 2006, Revenue Officer Kelly received a letter by certified  
20 mail dated May 24, 2006, from Aaron B. Johnson and Tanya Johnson requesting an extension of  
21 time to comply with the TJ Collection Summons, TJ TFRP Summons, AJ Collection Summons,  
22 and AJ TFRP Summons. (Kelly Decl., ¶ 13).

23       16. On June 9, 2006, Meigs sent two separate letters to Aaron B. Johnson scheduling  
24 second appearance dates with respect to the summonses served on him. One letter informed  
25 Aaron B. Johnson to appear before Revenue Officer Erin Kelly in San Diego, California, on June  
26, 2006 at 9:00 a.m. with respect to the AJ TFRP Summons and the other letter informed Aaron  
27 B. Johnson to appear before Revenue Officer Erin Kelly in San Diego, California, on June 26,

1 2006 at 1:00 p.m. with respect to the AJ Collection Summons. Also on June 9, 2006, Attorney  
2 Mindy S. Meigs of the Office of Chief Counsel, Internal Revenue Service, San Diego, California,  
3 sent two separate letters to Tanya Johnson scheduling two second appearance dates with respect  
4 to the summonses served on her. One letter informed Tanya Johnson to appear before Revenue  
5 Officer Erin Kelly in San Diego, California, on June 21, 2006 at 9:00 a.m. with respect to the TJ  
6 TFRP Summons and the other letter informed Tanya Johnson to appear before Revenue Officer  
7 Erin Kelly in San Diego, California, on June 21, 2006 at 1:00 p.m. with respect to the TJ  
8 Collection Summons. (Kelly Decl., ¶ 14).

9 17. On June 21, 2006 at 9:00 a.m., Tanya Johnson appeared before Revenue Officer  
10 Kelly and gave testimony with respect to the TJ TFRP Summons but failed to produce all of the  
11 documents, records, and other information described in the TJ TFRP Summons issued to her.  
12 Also on June 21, 2006 at 1:00 p.m., Tanya Johnson appeared before Revenue Officer Kelly and  
13 gave testimony and presented some documents with respect to the TJ Collections Summons but  
14 failed to produce all of the documents, records and other information described in the TJ  
15 Collection Summons issued to her. (Kelly Decl., ¶ 15).

16 18. On June 26, 2006 at 9:00 a.m., Aaron B. Johnson appeared before Revenue  
17 Officer Kelly and gave testimony with respect to the AJ TFRP Summons but failed to produce all  
18 of the documents, records, and other information described in the summonses issued to him.  
19 Also on June 26, 2006 at 1:00 p.m., Aaron B. Johnson appeared before Revenue Officer Kelly  
20 and gave testimony with respect to the AJ Collection Summons but failed to produce all of the  
21 documents, records, and other information described in the AJ Collection Summons issued to  
22 him. (Kelly Decl., ¶ 16).

23 19. With the exception of the following documents, the books, records, papers, and  
24 other data sought by the TJ Collection Summons, TJ TFRP Summons, AJ Collection Summons,  
25 and AJ TFRP Summons are not in the possession of the IRS:

26 a) An incomplete IRS Form 433-A, Collection Information Statement for Wage  
27 Earners and Self-Employed Individuals signed by Aaron B. Johnson.

1           b)     One statement, for the month ending May 31, 2006, for Aaron B. Johnson's bank  
2 account at 21 Financial Community Credit Union.

3           c)     A Notice of Entry of Judgment against Tanya Johnson, dated May 10, 2006.

4           d)     One mortgage loan statement for Tanya Johnson from Chase dated April 17,  
5 2006.

6           e)     One billing statement for Aaron B. Johnson from Lexus Financial Services dated  
7 April 25, 2006.

8           f)     A lease payoff statement for Aaron B. Johnson's leased Lexus vehicle from Lexus  
9 Financial Services.

10          g)     Two vehicle registration cards for Aaron B. Johnson's Lexus vehicle and Tanya  
11 Johnson's BMW vehicle.

12          h)     A 21<sup>st</sup> Century automobile insurance card for Aaron B. Johnson and Tanya  
13 Johnson.

14          i)     A statement from the County of San Diego concerning Aaron B. Johnson's child  
15 support obligation dated May 1, 2006.

16          j)     A Blue Shield of California insurance card for Aaron B. Johnson.

17          k)     An incomplete IRS Form 433-A, Collection Information Statement for Wage  
18 Earners and Self-Employed Individuals signed by Tanya Johnson.

19          l)     One monthly account statement for Tanya Johnson from BMW Financial  
20 Services.

21          m)     A lease payoff statement from BMW Financial Services for Tanya Johnson's  
22 leased vehicle.

23          n)     One mortgage loan statement for Tanya Johnson from Chase, dated May 25, 2006.

24          o)     One mortgage loan statement for Tanya Johnson from American General  
25 Financial Services, dated May 4, 2006. (Kelly Decl., ¶ 17).

1       20. The testimony, books, records, papers, and other data sought by the AJ Collection  
2 Summons and TJ Collection Summons may be relevant to determine Aaron B. Johnson's ability  
3 to pay the income tax liabilities assessed against him for the tax years ending December 31,  
4 2003, and December 31, 2004, and the trust fund recovery penalties assessed against him for the  
5 taxable periods ending December 31, 1997, March 31, 2000, June 30, 2000, December 2000,  
6 March 31, 2001, June 30, 2001, September 30, 2001, March 31, 2002, June 20, 2002, December  
7 31, 2002, March 31, 2003, June 30, 2003, September 30, 2003, and December 31, 2003. (Kelly  
8 Decl., ¶ 18).

9       21. The testimony, books, records, papers, and other data sought by the AJ TFRP  
10 Summons and TJ TFRP Summons may be relevant to determine whether Aaron B. Johnson and  
11 Tanya Johnson are liable for the trust fund recovery penalties with respect to SD City Event, Inc.,  
12 pursuant to 26 U.S.C. § 6672, for the taxable periods ending March 31, 2003, June 30, 2003,  
13 September 30, 2003, December 31, 2003, March 31, 2004, June 30, 2004, September 30, 2004,  
14 December 31, 2004, March 31, 2005, June 20, 2005, September 30, 2005, and December 31,  
15 2005. (Kelly Decl., ¶ 19).

16       22. No Justice Department referral, as defined by 26 U.S.C. § 7602(d)(2), is in effect  
17 with respect to determining Aaron B. Johnson's ability to pay the income tax liabilities assessed  
18 against him for the tax years ending December 31, 2003, and December 31, 2004, and the trust  
19 fund recovery penalties, pursuant to 26 U.S.C. § 6672, assessed against him for the taxable  
20 periods ending December 31, 1997, March 31, 2000, June 30, 2000, December 31, 2000, March  
21 31, 2001, June 30, 2001, September 30, 2001, March 31, 2002, June 30, 2002, December 31,  
22 2002, March 31, 2003, June 30, 2003, September 30, 2003, and December 31, 2003. (Kelly  
23 Decl., ¶ 20).

24       23. No Justice Department referral, as defined by 26 U.S.C. § 7602(d)(2), is in effect  
25 with respect to determining whether Aaron B. Johnson and Tanya Johnson are liable for trust  
26 fund recovery penalties with respect to SD City Event, Inc., pursuant to 26 U.S.C. § 6672, for the  
27 taxable periods ending March 31, 2003, June 30, 2003, September 30, 2003, December 31, 2003,  
28

1 March 31, 2004, June 30, 2004, September 30, 2004, December 31, 2004, March 31, 2005, June  
2 30, 2005, September 30, 2005, and December 31, 2005. (Kelly Decl., ¶ 21).

3 24. All administrative steps required by the Internal Revenue Code for the issuance of  
4 the summonses have been followed. (Kelly Decl., ¶ 22).

5 25. In order to obtain enforcement of a summons, the petitioner must establish that  
6 the summons: (1) is issued for a legitimate purpose; (2) seeks information relevant to that  
7 purpose; (3) seeks information that is not already within the IRS's possession; and (4) satisfies all  
8 administrative steps required by the Internal Revenue Code. United States v. Powell, 379 U.S.  
9 48, 57-58, (1964). The petitioner's burden of satisfying the Powell requirements is a "slight one"  
10 that can be met merely by presenting the sworn affidavit of the agent who issued the summonses  
11 attesting to these facts. United States v. Dynavac, Inc., 6 F.3d 1407, 1414 (9<sup>th</sup> Cir. 1993); United  
12 States v. Gilleran, 992 F.2d 232, 233 (9<sup>th</sup> Cir. 1993).

13 26. In further support of this Petition and incorporated herein by reference, the United  
14 States submits the Declaration of Revenue Officer Erin Kelly. The United States has met the  
15 Powell factors through these documents.

16 WHEREFORE, petitioner United States of America respectfully prays as follows:

17 A. That this Court enter an order directing Aaron B. Johnson and Tanya Johnson to  
18 show cause in writing, if any, why they should not comply with and obey the aforementioned IRS  
19 administrative summonses and every requirement thereof as enumerated in the Declaration of  
20 Revenue Officer Erin Kelly;

21 B. That this Court enter an order directing Aaron B. Johnson and Tanya Johnson to  
22 fully obey the aforementioned summonses and each of the requirements thereof as enumerated in  
23 the Declaration of Revenue Officer Erin Kelly, by ordering the attendance, testimony, and  
24 production required and called for by the terms of the summonses, before Revenue Officer Erin  
25 Kelly, or any other proper officer or employee of the IRS, at such time and place as may be set by  
26 Revenue Officer Erin Kelly or any other proper officer or employee of the IRS;

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11

11

- C. That the United States recover its costs incurred in maintaining this action; and
- D. That the Court grant such other and further relief as the Court deems just and

DATED this 3<sup>rd</sup> day of November, 2006.

Respectfully submitted,

CAROL C. LAM  
United States Attorney

~~ROBERT H. PLAXICO~~  
~~Assistant United States Attorney~~

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JS 44 (Rev. 3/99)

**ORIGINAL CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

**I (a) PLAINTIFFS**

United States of America

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)**

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**  
Jeremy N. Hendon, Trial Attorney  
Tax Division, U.S. Department of Justice  
P.O. Box 683, Ben Franklin Station  
Washington, D.C. 20044  
Telephone: (202) 353-2466

**DEFENDANTS**

Aaron B. Johnson and Tanya Johnson

COUNTY OF RESIDENCE OF LISTED DEFENDANTS San Diego, CA

(IN U.S. PLAINTIFF CASES ONLY)

06 NOV 30 PM 2:53

PDL

DEPUTY

LAND INVOLVED:

106 CV 2635 ILA AND

**ATTORNEYS (IF KNOWN)****II. BASIS OF JURISDICTION**

(PLACE AN "X" IN ONE BOX ONLY)

 1 U.S. Government Plaintiff 3 Federal Question  
U.S. Government Not a Party 2 U.S. Government Defendant 4 Diversity  
(Indicate Citizenship of Parties  
in item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES** (PLACE AN "X" IN ONE BOX FOR PLAINTIFF  
(For Diversity Cases Only))

(AND ONE BOX FOR DEFENDANT)

PTF DEF

PTF DEF

Citizen of This State  1  1Incorporated or Principal Place  
of Business in This State  4  4Citizen of Another State  2  2Incorporated and Principal Place  
of Business in Another State  5  5Citizen or Subject of a Foreign Country  3  3Foreign Nation  6  6**IV. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)**CONTRACT****TORTS****FORFEITURE/PENALTY****BANKRUPTCY****OTHER STATUTES**

- 110 Insurance
- 120 Marine
- 130 Miller Act
- 140 Negotiable Instrument
- 150 Recovery of Overpayment & Enforcement Judgment
- 151 Medicare Act
- 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- 153 Recovery of Overpayment of Veteran's Benefits
- 160 Stockholders Suits
- 190 Other Contract
- 195 Contract Product Liability

- 310 Airplane
- 315 Airplane Product Liability
- 320 Assault Libel & Slander
- 330 Federal Employers' Liability
- 340 Marine
- 345 Marine Product Liability
- 350 Motor Vehicle
- 355 Motor Vehicle Product Liability
- 360 Other Personal Injury

- PERSONAL INJURY
- 362 Personal Injury - Med. Malpractice
- 365 Personal Injury Product Liability
- 368 Asbestos Personal Injury Product Liability
- PERSONAL PROPERTY
- 370 Other Fraud
- 371 Truth in Lending
- 380 Other Personal Property Damage
- 385 Property Damage Product Liability

- 610 Agriculture
- 620 Other Food & Drug
- 625 Drug Related Seizure of Property 21 USC 881
- 630 Liquor Laws
- 640 R.R. & Truck
- 650 Airline Regs.
- 660 Occupational Safety/Health
- 690 Other

- 422 Appeal 28 USC 158
- 423 Withdrawal 28 USC 157

**PROPERTY RIGHTS**

- 820 Copyrights
- 830 Patent
- 840 Trademark

**LABOR****SOCIAL SECURITY**

- 710 Fair Labor Standards Act
- 720 Labor/Mgmt. Relations
- 730 Labor/Mgmt. Reporting & Disclosure Act
- 740 Railway Labor Act
- 790 Other Labor Litigation
- 791 Empl. Ret. Inc. Security Act

- 861 HIA (1395f)
- 862 Black Lung (923)
- 863 DIWC/DIWV (405(g))
- 864 SSID Title XVI
- 865 RSI (405(g))

**FEDERAL TAX SUITS**

- X 870 Taxes (U.S. Plaintiff or Defendant)

- 871 IRS - Third Party 28 USC 7604

**V. ORIGIN**

X 1. Original Proceeding

 2. Removed from State Court 3. Remanded from Appellate Court 4. Reinstated or Reopened 5. Transferred from another district (specify) 6. Multidistrict Litigation 7. Appeal to District Judge from Magistrate Judgment

## (PLACE AN "X" IN ONE BOX ONLY)

**VI. CAUSE OF ACTION** (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.) Action under 26 U.S.C. § 7604 for an order enforcing an IRS

administrative summons.

**VII. REQUESTED IN COMPLAINT:**CHECK IF THIS IS A CLASS ACTION  
 UNDER F.R.C.P. 23DEMAND  
 \$0CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  YES  NO**VIII. RELATED CASE(S) IF ANY**

(See Instructions):

JUDGE

DOCKET NUMBER

DATE

11/30/06

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_